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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Alphonso McDuffy,

Plaintiff,

vs.

**Tow Mate Towing, LLC, an Arizona
Limited Liability Company, and Michael
Butler and Jane Doe Butler,**

Defendants.

No.

VERIFIED COMPLAINT

Plaintiff, Alphonso McDuffy (“Plaintiff” or “McDuffy”), sues the Defendants, Tow Mate Towing, LLC (“Tow Mate”), and Michael Butler and Jane Doe Butler, (collectively “Defendants”); and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid minimum wages and overtime wages, liquidated damages, attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq.; the Arizona Minimum Wage Act (“AMWA”), Arizona Revised Statutes (“A.R.S.”) § Title 23, Chapter 8; and the Arizona Wage Act (“AWA”), A.R.S. § 23-351, et seq.

1 2. The FLSA was enacted “to protect all covered workers from substandard
2 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
3 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
4 minimum wage of pay for all time spent working during their regular 40-hour
5 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-
6 exempt employees one and one-half their regular rate of pay for all hours worked in
7 excess of 40 hours in a workweek. See 29 U.S.C § 207.

9 3. The AMWA, A.R.S § 23-363, et seq., establishes a minimum wage within
10 the State of Arizona.

12 4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage
13 payments to employees within the State of Arizona.

14 **JURISDICTION AND VENUE**

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16 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
17 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
18 the United States.

19 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because
20 acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and
21 Defendants regularly conduct business in and have engaged in the wrongful conduct
22 alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.
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PARTIES

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2 7. At all times material to the matters alleged in this Complaint, Plaintiff was
3 an individual residing in Maricopa County, Arizona, and is a former employee of
4 Defendants.

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6 8. At all material times, Defendant Tow Mate Towing, LLC was an Arizona
7 limited liability company duly licensed to transact business in the State of Arizona. At all
8 material times, Defendant Tow Mate Towing, LLC does business, has offices, and/or
9 maintains agents for the transaction of its customary business in Maricopa County,
10 Arizona.

11
12 9. At all relevant times, Defendant Tow Mate Towing, LLC owns and
13 operates as a company that repossessing vehicles.

14 10. Under the FLSA, Defendant Tow Mate Towing, LLC is an employer. The
15 FLSA defines “employer” as any person who acts directly or indirectly in the interest of
16 an employer in relation to an employee. At all relevant times, Defendant Tow Mate
17 Towing, LLC had the authority to hire and fire employees, supervised and controlled
18 work schedules or the conditions of employment, determined the rate and method of
19 payment, and maintained employment records in connection with Plaintiff’s employment
20 with Defendants. As a person who acted in the interest of Defendant Tow Mate Towing,
21 LLC in relation to the company’s employees, Defendant Tow Mate Towing, LLC is
22 subject to liability under the FLSA.

23 11. Defendants Michael Butler and Jane Doe Butler are, upon information and
24 belief, husband and wife. They have caused events to take place giving rise to the claims
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1 in this Complaint as to which their marital community is fully liable. Michael Butler and
2 Jane Doe Butler are owners of Defendant Tow Mate Towing, LLC and were at all
3 relevant times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).

4 12. Under the FLSA, Defendants Michael Butler and Jane Doe Butler are
5 employers under the FLSA. The FLSA defines "employer" as any person who acts
6 directly or indirectly in the interest of an employer in relation to an employee. At all
7 relevant times, Defendants Michael Butler and Jane Doe Butler had the authority to hire
8 and fire employees, supervised and controlled work schedules or the conditions of
9 employment, determined the rate and method of payment, and maintained employment
10 records in connection with Plaintiff's employment with Defendants. As persons who
11 acted in the interest of Defendants in relation to the company's employees, Defendants
12 Michael Butler and Jane Doe Butler are subject to individual liability under the FLSA.

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16 13. Plaintiff is further informed, believes, and therefore alleges that each of the
17 Defendants herein gave consent to, ratified, and authorized the acts of all other
18 Defendants, as alleged herein.

19 14. Defendants, and each of them, are sued in both their individual and
20 corporate capacities.

21
22 15. Defendants are jointly and severally liable for the injuries and damages
23 sustained by Plaintiff.

24 16. At all relevant times, Plaintiff was an "employee" of Defendants as defined
25 by the FLSA, 29 U.S.C. § 201, *et seq.*
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1 17. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
2 Defendants.

3 18. At all relevant times, Defendants were and continue to be “employers” as
4 defined by the FLSA, 29 U.S.C. § 201, *et seq.*
5

6 19. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
7 Defendants.

8 20. At all relevant times, Plaintiff was an “employee” of Defendants as defined
9 by A.R.S. § 23-362.
10

11 21. At all relevant times, Defendants were and continue to be “employers” of
12 Plaintiff as defined by A.R.S. § 23-362.

13 22. Defendants individually and/or through an enterprise or agent, directed and
14 exercised control over Plaintiff’s work and wages at all relevant times.
15

16 23. Plaintiff, in his work for Defendants, was employed by an enterprise
17 engaged in commerce that had annual gross sales of at least \$500,000.

18 24. At all relevant times, Plaintiff, in his work for Defendant, was engaged in
19 commerce or the production of goods for commerce.
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21 25. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
22 interstate commerce.

23 26. Plaintiff, in his work for Defendant, regularly handled goods produced or
24 transported in interstate commerce.
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FACTUAL ALLEGATIONS

27. Defendants own and/or operate as Tow Mate Towing, an enterprise located in Maricopa County, Arizona.

28. Plaintiff was hired by Defendants in approximately August 2021, and Plaintiff worked for Defendants until approximately December 2021.

29. At all relevant times, in his work for Defendants, Plaintiff worked as a tow truck driver and his job duties included driving tow truck and transporting vehicles with the tow truck.

30. Upon information and belief, Defendants, in their sole discretion, agreed to pay Plaintiff \$15.00 per hour, regardless of the number of hours he worked in a given workweek.

31. After approximately one month, Defendants changed his rate of pay to be on a per tow basis.

32. In his work for Defendants, Plaintiff regularly worked in excess of 40 hours in a given workweek.

33. Plaintiff typically worked in excess of 60 hours per week for Defendants.

34. Rather than classify Plaintiff as an employee, Defendants classified him as an independent contractor.

35. Despite Defendants having misclassified Plaintiff as an independent contractor, Plaintiff was actually an employee, as defined by the FLSA, 29 U.S.C. § 201 et seq.

1 36. In his work for Defendants, and throughout his entire employment with
2 Defendants, Plaintiff was not compensated \$684 per week on a salary basis.

3 37. Plaintiff, in his work for Defendants, was subject to a policy and practice of
4 having varying amounts of weekly pay based on quality or quantity of work.

5 38. Defendants controlled Plaintiff's schedules.

6 39. In his work for Defendants, Plaintiff used vehicles and equipment owned
7 by Defendants.

8 40. At all relevant times, Plaintiff was economically dependent on Defendants.

9 41. The following further demonstrate that Plaintiff was an employee:
10

- 11 a. Defendants had the exclusive right to hire and fire Plaintiff;
12 b. Defendants made the decision not to pay overtime to Plaintiff;
13 c. Defendants supervised Plaintiff and subjected him to Defendants'
14 rules;
15 d. Defendants required Plaintiff to wear their uniform;
16 e. Plaintiff had no opportunity for profit or loss in the business;
17 f. The services rendered by Plaintiff in his work for Defendants was
18 integral to Defendants' business;
19 g. Plaintiff was hired as a permanent employee, working in excess of 60
20 hours per week for several months;
21 h. Plaintiff had no right to refuse work assigned to him by Defendants;
22 i. Defendants refused to allow him to work for other towing
23 companies.
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1 42. At all relevant times, Defendants did not pay Plaintiff one and one-half
2 times his regular rates of pay for time spent working in excess of 40 hours in a given
3 workweek.

4 43. During the time that Plaintiff worked for Defendants, Plaintiff regularly
5 worked in excess of 40 hours in a given workweek without receiving any overtime
6 premium whatsoever, in violation of the FLSA, 29 U.S.C. § 207(a).

8 44. During the time that Plaintiff worked for Defendants, Plaintiff regularly
9 worked in excess of 40 hours in a given workweek without receiving one and one-half
10 times his regular rate of pay, in violation of the FLSA, 29 U.S.C. § 207(a).

12 45. During Plaintiff's final week of work for Defendants, Plaintiff worked
13 approximately 72 hours for Defendants.

14 46. Defendants refused to give Plaintiff his final paycheck.

15 47. As a result of failing to pay Plaintiff his final paycheck, Defendants failed
16 to compensate Plaintiff any wages whatsoever for his final week of work for Defendants.

18 48. As a result, Defendants failed to compensate Plaintiff at least the statutory
19 minimum wage for all hours worked in his final workweek.

20 49. Additionally, during his employment, Defendants only compensated
21 Plaintiff at his hourly rate during the times that he was actually performing a tow.

23 50. At times when Plaintiff was not making a tow, Defendants did not
24 compensate Plaintiff for such hours, even though Plaintiff was required to be ready to
25 travel to any tow that may come in.
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1 51. As a result, during these times, Plaintiff was engaged by Defendants to wait
2 for tow calls to come in.

3 52. As a result of Defendants failing to pay Plaintiff for all hours worked,
4 Defendants failed to compensate Plaintiff at least the applicable minimum wage for all
5 hours worked throughout his employment with Defendants.
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7 53. As a result of Defendants' willful failure to compensate Plaintiff at least the
8 statutory minimum wage for such hours worked, Defendants violated 29 U.S.C. § 206(a).
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10 54. As a result of Defendants' willful failure to compensate Plaintiff at least the
11 statutory minimum wage for such hours worked, Defendants violated the AMWA,
12 A.R.S. § 23-363.

13 55. As a result of Defendants' willful failure to compensate Plaintiff all wages
14 due and owing for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.
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16 56. Defendants classified Plaintiff as an independent contractor to avoid their
17 obligation to pay Plaintiff one and one-half times his regular rate of pay for all hours
18 worked in excess of 40 hours per week.

19 57. Defendants classified Plaintiff as an independent contractor to avoid their
20 obligation to pay Plaintiff overtime for all hours worked in a given workweek.
21

22 58. Plaintiff was a non-exempt employee.

23 59. At all relevant times, Defendants failed to properly compensate Plaintiff for
24 any of his overtime hours.

25 60. Defendants knew that – or acted with reckless disregard as to whether –
26 their refusal or failure to properly compensate Plaintiff during the course of his
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1 employment would violate federal and state law, and Defendants were aware of the
2 FLSA minimum wage and overtime requirements during Plaintiff's employment. As
3 such, Defendants' conduct constitutes a willful violation of the FLSA, the AMWA, and
4 the AWA.

5
6 61. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
7 of his rights under the FLSA.

8 62. Plaintiff is a covered employee within the meaning of the FLSA.

9
10 63. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
11 of his rights under the FLSA.

12 64. Defendants individually and/or through an enterprise or agent, directed and
13 exercised control over Plaintiff's work and wages at all relevant times.

14 65. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
15 from Defendants compensation for unpaid minimum and overtime wages, an additional
16 amount equal amount as liquidated damages, interest, and reasonable attorney's fees and
17 costs of this action under 29 U.S.C. § 216(b).

18
19 66. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
20 from Defendants compensation for unpaid minimum wages, an additional amount equal
21 to twice the unpaid minimum wages as liquidated damages, interest, and reasonable
22 attorney's fees and costs of this action under A.R.S § 23-363.

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24 67. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
25 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
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1 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
2 and his costs incurred under A.R.S. § 23-355.

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7 **COUNT ONE: FAIR LABOR STANDARDS ACT**
8 **FAILURE TO PAY OVERTIME**

9 68. Plaintiff realleges and incorporates by reference all allegations in all
10 preceding paragraphs.

11 69. Plaintiff was a non-exempt employee entitled to statutorily mandated
12 overtime wages.

13
14 70. In a given workweek, Defendants failed to pay one and one-half times the
15 applicable regular rate of pay for all hours worked in excess of 40 hours.

16 71. As a result of Defendants' failure to pay Plaintiff one and one-half times his
17 regular rate for all hours worked in excess of 40 per week in a given workweek,
18 Defendants failed and/or refused to pay Plaintiff the applicable overtime rate for all hours
19 worked for the duration of his employment, in violation of 29 U.S.C. § 207.

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21 72. As a result of Defendants' willful failure to compensate Plaintiff the
22 applicable overtime rate for all hours worked, Defendants violated the FLSA.

23
24 73. As such, the full applicable overtime rate is owed for all hours that Plaintiff
25 worked in excess of 40 hours per week.

1 74. Defendants knew that – or acted with reckless disregard as to whether –
2 their failure to pay Plaintiff the proper overtime rate would violate federal and state law,
3 and Defendants were aware of the FLSA minimum wage requirements during Plaintiff’s
4 employment. As such, Defendants’ conduct constitutes a willful violation of the FLSA.
5

6 75. Defendants have and continue to willfully violate the FLSA by not paying
7 Plaintiff a wage equal to one- and one-half times the applicable regular rate of pay for all
8 time Plaintiff spent working for Defendants.

9 76. Plaintiff is therefore entitled to compensation one and one-half times his
10 regular rate of pay for all hours worked in excess of 40 per week at an hourly rate, to be
11 proven at trial, plus an additional equal amount as liquidated damages, together with
12 interest, costs, and reasonable attorney fees.
13

14 **WHEREFORE**, Plaintiff, Alphonso McDuffy, respectfully requests that this
15 Court grant the following relief in Plaintiff’s favor, and against Defendants:
16

17 A. For the Court to declare and find that the Defendants committed one of
18 more of the following acts:

19 i. Violated overtime wage provisions of the FLSA, 29 U.S.C. § 207(a),
20 by failing to pay proper minimum wages;
21

22 ii. Willfully violated overtime wage provisions of the FLSA, 29 U.S.C.
23 § 207(a) by willfully failing to pay proper overtime wages;
24

25 B. For the Court to award Plaintiff’s unpaid overtime wage damages, to be
26 determined at trial;
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- 1 C. For the Court to award compensatory damages, including liquidated
2 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
3 D. For the Court to award prejudgment and post-judgment interest;
4 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
5 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
6 forth herein;
7 F. Such other relief as this Court shall deem just and proper.
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10 **COUNT TWO: FAIR LABOR STANDARDS ACT**
11 **FAILURE TO PAY MINIMUM WAGE**

12 77. Plaintiff realleges and incorporates by reference all allegations in all
13 preceding paragraphs.

14 78. As a result of failing to pay Plaintiff his final paycheck and failing to pay
15 Plaintiff for all hours worked throughout his employment, Defendants willfully failed or
16 refused to pay Plaintiff the FLSA-mandated minimum wage.

17 79. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
18 required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).
19

20 80. Plaintiff is therefore entitled to compensation for the full applicable
21 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
22 liquidated damages, together with interest, reasonable attorney's fees, and costs.
23

24 **WHEREFORE**, Plaintiff, Alphonso McDuffy, respectfully requests that this
25 Court grant the following relief in Plaintiff's favor, and against Defendants:
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27

- 1 A. For the Court to declare and find that the Defendants committed one of
2 more of the following acts:
- 3 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §
4 206(a), by failing to pay proper minimum wages;
5
- 6 ii. Willfully violated minimum wage provisions of the FLSA, 29
7 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;
- 8 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
9 determined at trial;
- 10 C. For the Court to award compensatory damages, including liquidated
11 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
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- 13 D. For the Court to award prejudgment and post-judgment interest;
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- 15 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
16 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
17 forth herein;
- 18 F. Such other relief as this Court shall deem just and proper.

19 **COUNT THREE: ARIZONA MINIMUM WAGE ACT**
20 **FAILURE TO PAY MINIMUM WAGE**

21 81. Plaintiff realleges and incorporates by reference all allegations in all
22 preceding paragraphs.
23

24 82. As a result of failing to pay Plaintiff his final paycheck and failing to pay
25 Plaintiff for all hours worked throughout his employment, Defendant willfully failed or
26 refused to pay Plaintiff the Arizona minimum wage.
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1 83. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
2 required minimum wage rate violated the AMWA, A.R.S. § 23-363.

3 84. Plaintiff is therefore entitled to compensation for the full applicable
4 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
5 twice the underpaid wages as liquidated damages, together with interest, reasonable
6 attorney's fees, and costs.

7
8 **WHEREFORE**, Plaintiff, Alphonso McDuffy, respectfully requests that this
9 Court grant the following relief in Plaintiff's favor, and against Defendants:
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11 A. For the Court to declare and find that the Defendant committed one of more
12 of the following acts:

13 i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-
14 363, by failing to pay proper minimum wages;

15 ii. Willfully violated minimum wage provisions of the AMWA, A.R.S.
16 § 23-363 by willfully failing to pay proper minimum wages;
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18 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
19 determined at trial;

20 C. For the Court to award compensatory damages, including liquidated
21 damages pursuant to A.R.S. § 23-364, to be determined at trial;

22 D. For the Court to award prejudgment and post-judgment interest;

23 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
24 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
25 herein;
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1 F. Such other relief as this Court shall deem just and proper.

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5 **COUNT FOUR: ARIZONA WAGE ACT**
6 **FAILURE TO PAY WAGES DUE AND OWING**

7 85. Plaintiff realleges and incorporates by reference all allegations in all
8 preceding paragraphs.

9 86. As a result of the allegations contained herein, Defendants did not
10 compensate all Plaintiff wages due and owing to him.

11 87. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

12 88. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
13 for the entire time he was employed by Defendants.

14 89. Defendants knew that – or acted with reckless disregard as to whether –
15 their refusal or failure to properly compensate Plaintiff over the course of his
16 employment would violate federal and state law, and Defendants were aware of the
17 Arizona Wage Act’s requirements during Plaintiff’s employment. As such, Defendants’
18 conduct constitutes a willful violation of the Arizona Wage Act.

19 90. Plaintiff is therefore entitled to compensation for his unpaid wages at an
20 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
21 wages, plus interest thereon, and his costs incurred.

22 **WHEREFORE**, Plaintiff, Alphonso McDuffy, requests that this Court grant the
23 following relief in Plaintiff’s favor, and against Defendants:
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- 1 A. For the Court to declare and find that the Defendants violated the unpaid
2 wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due
3 and owing to Plaintiff;
4 B. For the Court to award an amount that is treble Plaintiff's unpaid wages
5 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
6 C. For the Court to award prejudgment and post-judgment interest on any
7 damages awarded;
8 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
9 the action and all other causes of action set forth in this Complaint; and
10 E. Such other relief as this Court deems just and proper.
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16 **JURY TRIAL DEMAND**

17 Plaintiff hereby demands a trial by jury on all issues so triable.

18 RESPECTFULLY SUBMITTED this 25th day of February 2022.
19

20 BENDAU & BENDAU PLLC

21 By: /s/ Christopher J. Bendau


22 Christopher J. Bendau

23 Clifford P. Bendau, II

24 Attorneys for Plaintiff
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VERIFICATION

Plaintiff, Alphonso McDuffy, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and believe, and, as to those matters, he believes them to be true.


Alphonso McDuffy (Feb 25, 2022 10:43 MST)
Alphonso McDuffy